

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 307.12, 307A.2, 321.449 and 321.450, the Iowa Department of Transportation (Department) hereby gives Notice of Intended Action to amend Chapter 520, "Regulations Applicable to Carriers," Iowa Administrative Code.

The Department is amending rule 761—520.8(321), planting and harvesting periods. The Federal Motor Carrier Safety regulations established by the Federal Motor Carrier Safety Administration (FMCSA) impose hours-of-service limits on drivers of commercial motor vehicles, but exempt certain agricultural operations from those hours-of-service limits during the planting and harvesting period. 49 CFR 395.1(k) states that the hours-of-service limits imposed by 49 CFR Part 395, "Hours of Service of Drivers," do not apply "during planting and harvesting periods, as determined by each State, to drivers transporting

"(1) Agricultural commodities from the source of the agricultural commodities to a location within a 150 air-mile radius from the source;

"(2) Farm supplies for agricultural purposes from a wholesale or retail distribution point of the farm supplies to a farm or other location where the farm supplies are intended to be used within a 150 air-mile radius from the distribution point; or

"(3) Farm supplies for agricultural purposes from a wholesale distribution point of the farm supplies to a retail distribution point of the farm supplies within a 150 air-mile radius from the wholesale distribution point."

The Department implements this exception through rule 761—520.8(321). Rule 761—520.8(321) currently sets the planting and harvesting period in Iowa as the period from March 15 through June 30 and October 4 through December 14.

This set and limited time period has proved too restrictive and inflexible, as it often does not align to changing weather and other conditions that may accelerate, delay, extend, or otherwise alter the planting and harvesting period. To remedy this, other states have defined their planting and harvesting period for this purpose to extend throughout the calendar year, January 1 to December 31, and the FMCSA has accepted this approach. The Department is amending rule 761—520.8(321) to take the same approach and define the planting and harvesting period in Iowa as January 1 to December 31. This change will allow Iowa drivers engaged in the subject agricultural operations to take advantage of the federal hours-of-service exemption whenever they are engaged in those operations, regardless of fluctuations in the actual planting and harvesting period in a given year. The change will also make this declaration of the planting and harvesting period match the declaration of the planting and harvesting period made for restricted commercial driver's licenses (CDLs), which are licenses issued to suppliers or employees of suppliers of agricultural inputs that allow the license holder to operate commercial motor vehicles for the purpose of supplying agricultural inputs during planting and harvesting without applying and testing for a full CDL. In January 2017, the Department amended rule 761—607.49(321) to similarly change the planting and harvesting period declared for operation under restricted CDLs from March 15 through June 30 and October 4 through December 14 to January 1 to December 31. Making these declarations match will ensure that agricultural input drivers with restricted CDLs will not be subjected to inconsistent regulations that unnecessarily require them to comply with hours-of-service requirements while performing subject agricultural operations.

Any person or agency may submit written comments concerning this amendment or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.

2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.

3. Indicate the general content of a requested oral presentation.

4. Be addressed to Tracy George, Rules Administrator, Iowa Department of Transportation, Strategic Communications and Policy, 800 Lincoln Way, Ames, Iowa 50010; email: tracy.george@iowadot.us.

5. Be received by the Department's rules administrator no later than December 26, 2017.

A meeting to hear requested oral presentations is scheduled for Thursday, December 28, 2017, at 10 a.m. at the Iowa Department of Transportation's Motor Vehicle Division offices located at 6310 SE Convenience Boulevard, Ankeny, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

This amendment may have an impact on small business. A request for a regulatory analysis pursuant to Iowa Code section 17A.4A shall be addressed to Tracy George, Rules Administrator, Iowa Department of Transportation, Strategic Communications and Policy, 800 Lincoln Way, Ames, Iowa 50010; email address: tracy.george@iowadot.us. The request must be received by the Department's rules administrator no later than February 14, 2018.

These rules do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

After analysis and review of this rule making, the Department finds that this amendment is expected to have a positive impact on private sector jobs and employment opportunities in Iowa. Drivers engaged in agricultural operations subject to the exemption and businesses that employ them will have more flexibility to conduct those operations throughout the year, regardless of year-to-year fluctuations in the planting and harvesting period, and will be able to avoid unnecessarily investing in and using electronic logging devices, which should improve performance, profitability, and opportunity for employment.

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 3483C**. The purpose of this Notice of Intended Action is to solicit public comment on that submission, the subject matter of which is incorporated by reference.

This amendment is intended to implement Iowa Code sections 321.449 and 321.450.